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THE TRANSFER OF PROPERTY ACT AMENDING BILL.

The Transfer of Property Act (IV of 1882) has been amended in various minor particulars by about a dozen amending Acts since 1882, but there has been so far no general revision of the Act. During the forty-six years of its existence, several conflicting decisions have been given by the courts and some new principles not provided by the Act have been promulgated by recent decisions of the Privy Council. The experience of about half a century has also revealed the desirability of modifying the policy underlying some of the sections. The Legislature has now turned its attention to the desirability of a general revision, and two Bills Nos. 33 and 34 of 1927, have been published in the *Gazette of India* under R. 18 of the Indian Legislature Rules. The first is a comprehensive one of about 61 sections amending the various sections of the main Act of 1882. The second is a short supplementary amending bill dealing with consequential amendments in the Code of Civil Procedure, the Registration Act, the Specific Relief Act, the Indian Succession Act and the Married Women's Property Act, 1874.

CHAPTER I OF THE ACT.

The main changes proposed in Chapter I of the Act are the omission of the words "Hindu" and "Buddhist" in S. 2 of the Act and the new definition of the word 'notice'. As regards the first, under the existing Act, nothing in the second chapter shall be deemed *to affect* any rule of Hindu, Buddhist or Mahomedan Law. As the general sections of the Act from 5 to 53 do not go contrary to any of the existing provisions of Hindu Law as modified by the Legislature, we see no objection to the proposal to omit the words as it would be a step towards evolution of the law of property governing all sections of people in India.

As regards the new definition of the word 'notice' this is certainly an improvement on the old but we would point out that Explanation I, which declares that registration of a document, by which a transaction relating to immoveable property is affected, is by itself to be deemed to be actual notice of the instrument as from the date of registration, is somewhat too wide. In the first place encumbrance certificates granted by the registration offices do occasionally contain omissions by inadvertence or mistake. Secondly, third parties are not entitled to obtain copies of *all* registered documents. Cases may also occur where knowledge of registration of a document relating to immoveable properties is not always immediately available in the office where the properties are situate, as for instance, where moffusil properties are registered in Madras on payment of a special fee. Questions may also arise as to the point of time in the course of the same day when a transaction takes place without knowledge of a prior transaction which may be registered in the course of the day. It may be more advisable to treat the question as one of fact dependent upon the circumstances of the case especially as the recent decision of the Privy Council in *Tilakdhari Lal* v. *Kedan Lal* (1) has now settled the conflict between the High Courts on the point under discussion.

Explanation III deals with the case of notice through an agent. The proposed explanation which is undoubtedly an improvement on the old definition makes it clear that notice whether actual or *constructive* of any fact to an agent while acting in the course of the business transacted on behalf of the principal is notice to the principal. No doubt it is a rule of law that an agent stands in the place of the principal for the purpose of the business in hand and the agency "extends to receiving notice on behalf of the principal of whatever is material to be stated in the course of the proceedings." But we are not satisfied that the statutory definition will cover all the well-established limitations recognised by the decisions on the scope of the doctrine. For instance, the case of fraud on the part of the agent who, acting in furtherance of his own interests and committing a fraud on the principal, conceals the facts from the knowledge of his principal, is not clearly provided for. No doubt it may be said that in such cases as in the above the agent is acting not in his character as agent but in that of a party to an independant fraud on the principal. It is however desirable that the matter should be made clearer by an explicit provision.

1. (1920) L R 47 I A 239 : I L R 48 C 1 : 39 M L J 243 (P C).

CHAPTER II OF THE ACT.

In Chapter II, dealing with the general principles of transfer, the main amendments proposed are the following : In S. 6 of the Act, enumerating the kinds of property that cannot be transferred, it is proposed to add that "a right to future maintenance in whatsoever manner arising or secured or determined cannot be transferred". This may be accepted. The amendments proposed by Cls. (7) and (11) of the Bill in respect of Ss. 11 and 40 of the Act are stated to bring the law into conformity with English decisions subsequent to 1882, and the distinction between affirmative and negative covenants as regards their enforceability against transferees with notice is recognised and provided for.

It is no doubt true that in 1882 the Indian Legislature had before it only the decision in *Tulk* v. *Moxhay* (2) and the English Law has since then been modified. It is however very doubtful if the later distinctions between affirmative and negative covenants are not merely the common law rules and whether it is not open to Courts of Equity to adopt the more equitable view of the earlier case. The weighty observations of the Privy Council in *Lord Strath Cona Steamship Company, Ltd.* v. *Dominion Coal Company, Limited* (3) are in favour of the latter view. No doubt that was not a case dealing with immoveable properties, but the distinction, if any, is really in favour of applying the equitable principle in that case also.

Clause 8 of the Bill proposes to abolish the rule in *Leake* v. *Robinson* (4) and adopt the rule suggested by Wilson, J., in *Ramlal Sett* v. *Kanai Lal Sett* (5) and approved of by the Privy Council in *Bhagabati Barmanya* v. *Kalicharan Singh* (6), *viz.*, that where a gift to a class fails for the reasons mentioned in Ss. 13 and 14 of the Act, the failure is to be not in respect of the whole class but only so far as the gift relates to those persons who come under Ss. 13 and 14. This is quite a welcome change as it really effectuates the intention of parties. S. 102 of the Indian Succession Act is proposed to be brought into line by corresponding amendment by the Supplementary Bill. But it should be noted that Madras Acts, I of 1914 and VIII of 1921, and Hindu Disposition of Property Act, XV of 1916, should not

2. (1848) 2 Ph. 774 : 41 E R 1143
3. L R (1926) A C 108.
4. (1817) 2 Mer 363 : 35 E R 979.
5. (1886) I L R 12 C 663.
6. (1911) L R 38 I A 54 : I L R 38 C 468 : 21 M L J 237 (P C).

be repealed unless the proposed omission of the word 'Hindu' in S. 2 of the Act is carried. Even then in view of S. 6, Cl. (*b*) (3), S. 13 of the Act must be amended by the insertion of a sub-clause to the effect that a gift can be made in favour of an unborn person notwithstanding anything to the contrary in Hindu Law. The proposed repeal of the three Acts mentioned above may otherwise restore the original disqualification under Hindu Law based on the personal incapacity of an unborn Hindu to be the donee of a gift and we shall be restored to the old difficulties and anomalies which rendered it necessary to pass these enabling Acts.

Clause (9) of the Bill provides for a complete change in the old law as regards the validity of clauses directing accumulations. The maximum period for which the accumulations are permitted is reasonable and sufficient though it is not in accordance with the English Law or the principles underlying S. 13 and S. 14 of the Act. We are not however satisfied as to the necessity for extending the period in the case of the exceptions mentioned in the clause. We think a uniform period is sufficient in all cases.

Clause 10 of the Bill is supposed to safeguard the interest of persons having a right to maintenance or a provision for advancement or marriage from the profits of immoveable property and to prevent their being cheated out of their rights by a transfer of the property. The present S. 39 of the Act protects the interests of the *bona fide* transferee of such properties. It is only if the transferor transfers the property with the intention of defeating such rights and the transferee has notice of that intention that a purchaser for consideration will be affected. The proposal to omit the requirements as to the fraudulent intention of the transferor is not however desirable as the interests of a *bona fide* purchaser for value are unduly jeopardised. The position will be worse in the case of purchasers of some specific items belonging to a 'Hindu' as in such cases the claim for maintenance and marriage portions do not attach to any definite property in the hands of the owner, but at the same time there is an inchoate lien over the estate which may become definite and specific by a decree. If the proposed amendment is to be accepted, there must be a further amendment by the addition of the word 'specific' before the words 'immoveable property' in S. 39.

Clause (12) of the Bill seeks to amend S. 43 of the Act by inserting the words 'fraudulently or' before the word 'erroneously'. This is merely an amendment which makes clear the

existing law. It is proposed to limit the operation of the doctrine of "interest feeding estoppel" to the period before a decree is obtained by the transferor enforcing the transfer and to prevent the transferee from claiming the benefit of subsequent accretion of interest to the transferor, even though the decree is not satisfied. The Madras High Court decided in *Ajijuddin Sahib* v. *Sheik Budan Sahib* (7) that the contract of transfer subsists even though it is merged in the decree. The amendment now proposed takes away that right but we do not see why the transferee's equitable rights should be sought to be arrested by his getting an unsatisfied decree.

Clause (13) deals with the rule of *lis pendens.* The substitution of the word 'pendency' for the words 'active prosecution' in S. 52 removes certain difficulties felt by the court and is necessary. The proposed omission of the word 'contentious' is unnecessary. The new explanation is intended to settle conflicting decisions and is in consonance with the general trend of decisions.

Clause (14) of the Bill entirely recasts the language of S. 53, dealing with avoidance of fraudulent transfers. Following Ss.172 and 173 of the English Law of Property Act, 1925, the old section is split into two parts, one dealing with transfers intended to defeat and delay creditors and the other dealing with voluntary settlements intended to defraud subsequent transferees for consideration. This arrangement is unexceptionable. As regards the first part, the additional provision now proposed is to make it compulsory on a creditor who is avoiding a fraudulent transfer to file a representative suit on behalf of and for the benefit of all the creditors. This is a necessary provision and settles the conflicting decisions of the courts on the point. As regards the second part however it may be noted that transfers made for grossly inadequate consideration are not covered by the proposed new sub-section. Again the case of a transfer of property in favour of a charity which is of frequent occurrence in India needs to be separately provided for, *Ramsay* v. *Gilchrist* (8). It does not however seem desirable to omit from the present section the words "the prior transferees and co-owners or other persons having an interest in such property". Again the section requires to be amended so as to settle the conflict of decisions as regards the extent of avoidance of a fraudulent transfer where part of the consideration is real and part only fictitious and fraudulent. The transferee in

7. (1895) I L R 18 M 492. 8. L R (1892) A C 412.

such cases should be given a charge over the properties to the extent of the consideration properly paid by him.

One of the most important amendments proposed in the Bill is the one made by Cl. 15 which provides for the statutory recognition of the well-known doctrine of 'Part Performance'. The amendment proposes to confine the doctrine to written contracts. This restriction of the scope of the doctrine is not unreasonable. It must be however clearly provided that all the covenants in the contract are capable of being enforced as if the transfer is completed in the manner required by law to make it a valid transfer. The section as now drafted is not complete. It does not in terms provide for the enforcement of the rights under the incomplete transfer by the transferee except by the proposed addition of a new clause in the Specific Relief Act, with which we shall deal later on, and, even as regards the rights of the transferor, it does not affirmatively provide for enforcement of all covenants against the transferee. No doubt, by implication, the transferor can enforce the rights arising out of the contract so far as the properties are concerned, but it is not clear that other rights not directly involving relief against the property can be enforced. This may assume importance in case of leases. Again it would be desirable to provide for completion of the formalities required to validate the transfer as such on the first occasion when the court is called upon to recognise the rights by making its decree conditional upon compliance with such directions as may be necessary to validate the transfer. This would of course involve an amendment of the Registration Act, permitting registration of documents even after the time limit originally fixed for registration has passed. It may also be noted that change of possession actually or otherwise is not always a necessary part of the acts of part-performance, as the section assumes. There may be other acts of part-performance unconnected with possession which may let in the doctrine.

SALES.

Clause 16 of the bill proposes to amend S. 54 of the Act by making it compulsory to have a registered instrument in the case of any sale of immoveable property or of any interest in it irrespective of the value of the property. This can be accepted. The other changes proposed are merely verbal and consequential.

Clause 17 proposes to make certain alterations in respect of the vendor's lien for unpaid purchase money and the buyer's lien for advance. The sub-sections as now drafted cannot be accepted. It is difficult to see why notice of the prior

sale is to make the lien enforceable against the subsequent purchaser. What is required is that the subsequent purchaser must have notice of the non-payment of consideration and the lien which is sought to be enforced against the property in his hands. In the case of gratuitous transferees there seems to be no equity why the lien should not be enforced even in the absence of any notice. Similarly S. 55, clause (*b*) is proposed to be altered by omitting the words 'with notice of the payment'. This is even worse. It is manifestly unjust that a *bona fide* transferee for consideration should be held to suffer by a lien being allowed to be enforced against the property in his hands for advance money paid by a proposed purchaser several years prior to his transfer of which he has no notice. The really equitable provision will be to make the lien enforceable in either case against the property in the hands of all persons except those who have subsequently got an interest in it for consideration and in good faith and in ignorance of the existence of the charge. The use of the word "charge" is by itself sufficient to exclude cases of *bona fide* purchasers and mortgagees for value without notice. See *Webb* v. *Macpherson* (9) and *Alwar Chetty* v. *Jagannatha Aiyar* (10). It would be sufficient to omit the words 'in the hands of the buyer' in S. 55, clause 4 (*b*), and the words "as against the seller and all persons claiming under him with notice of the payment" in clause 6 (*b*). A sub-section is to be added in both cases that "nothing in the above sub-section shall affect any rights of subsequent transferees of the property for consideration in good faith and without notice of the charge". Clause 18 widens the scope of the right of marshalling in favour of a subsequent purchaser. It is explicitly made applicable to cases where more than two properties are involved and the extent of the right is enlarged by omitting the words "as against the seller" in S. 56. The old section was unduly restrictive and the proposed amendment carries out a desirable change, notwithstanding the fact that ordinary mortgage suits may thus become more complicated.—*S. P.*

(*To be continued*)

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9. (1903) L R 30 I A 238 : I L R 31 C 57 : 13 M L J 389 (P. C.).
10. (1927) 54 M L J 109.

SUMMARY OF ENGLISH CASES.

GALE *v.* MOTOR UNION INSURANCE CO., (1928) 1 K. B. 359.

Insurance—Motor-car—Two persons insured in two different companies—Risk covered by two policies—Liability—Rateable contribution.

A and B were insured in respect of motor-car risks in two different companies. B in driving A's car with A's consent caused damage to a third person and therefore was liable to pay damages to the third person. This risk was covered by both the policies. But the provisions in each policy were, (1) if the risk was covered by another policy the insurers should not be liable and (2) that where two policies covering the risk were in existence the insurers should pay rateably.

Held, each Insurance Company should pay half since the provision as to rateable contribution qualifies and explains the preceding clause negativing the liability.

KONSKIER *v.* B. GOODMAN, LTD., (1928) 1 K. B. 421.

Torts—Trespass—Building operations—License given by the owner to pull down chimney stack—Builder allowing the rubbish to stand for a length of time—Damage—Action for negligence and trespass—Maintainability.

The defendants, engaged in pulling down the upper storeys of a house in a street, obtained a license from the then owner of an adjoining house No. 87 to pull down part of the chimney stack of No. 87, in consideration of which they undertook to rebuild it and to make good any damage caused to No. 87 in doing any of the works. The defendants finished the work of pulling down and rebuilding, but they omitted to remove a quantity of rubbish which they had allowed to fall on the roof of No. 87. When the plaintiff was occupying No. 87, this rubbish choked the gully and the basement of the house was flooded by a heavy storm of rain. In a suit by the plaintiff for damages against the defendants,

Held, that there was no negligence on the part of the defendants because the damage did not arise from a breach of some duty on the part of the defendants to the plaintiff, but, in allowing the rubbish to remain beyond a reasonable time, the defendants were guilty of a trespass which was continuing when the plaintiff became the tenant at No. 87.

SMITH *v.* SCHILLING, (1928) 1 K. B. 429.

Practice—Several causes of action in one action—Plea of payment into court of one sum without specification—Plea, if bad—Rules of Supreme Court, O. 22—Jury trial—Assessment of damages—Interference by Court of Appeal.

A plea by the defendant that he paid into court one lump sum to satisfy three causes of action of three plaintiffs without specifying the causes of action in respect of which the payments are made is bad under O. 22 of the Rules of the Supreme Court.

A Court of Appeal is slow to interfere with the amount of damages found by a Jury and, before it is induced to do so, it must be satisfied that the Jury have either taken into account matters which they ought not to have taken into account or have neglected or disregarded matters which they ought to have taken into account.

ROYAL ANTEDILUVIAN ORDER OF BUFFALOE *v.* OWENS, (1928) 1 K. B. 446.

Income-tax—Unregistered Friendly Society purchasing premises—Conversion into convalescent home—Hospital—No expense borne by the members—Exemption from assessment in respect of premises—Income-tax Act, 1918 (8 *&* 9 *Geo.* 5, *c.* 40), *Schedule A, No. VI, rule* 1 (*c*).

An unregistered friendly society, which had for its principal objects the relief of distressed members and their dependants, and the promotion of social intercourse and recreation among its members, had about two million members, most of them being working men of small means. The society purchased certain premises which were conveyed to trustees upon trust to hold them for the society. These premises were then converted into a convalescent home for the members of the society. The members of the society paid the purchase price, and the society lent moneys for the equipment and maintenance of the home. The patient was not to incur any expense either for travelling to the home or during his residence there. But only a limited number of members could enjoy the amenities of the home. There was also a staff of nurses and servants at home, and medical aid was given gratuitously by doctors.

Held that, since the home could be regarded as an eleemosynary establishment maintained by the society for the benefit of a few of its members out of many, it was a 'hospital' within the

meaning of Schedule A, No. VI, rule 1 (*c*) of the Income-tax Act, 1918, and the society was therefore entitled to exemption from assessment to income-tax in respect of premises belonging to it.

WHITE *v.* WHITCHER, (1928) 1 K. B. 453.

Income-tax—Accumulation of income under trust—Fund to be paid to beneficiary twenty years after date of death of testatrix—Whether benefit contingent on "attaining some specified age"—Income-tax Act, 1918 (8 *&* 9 *Geo.* 5, *c.* 40), *S.* 25.

A fund was by will directed to be accumulated for twenty years from the death of the testatrix when it was to be divided among the then living children of a certain marriage. There was one such child living at the date of the will and no more were ever born although the parents survived the testatrix. The twenty years having expired, the child became entitled to the whole fund.

Held that the fund had not been accumulated for the benefit of the said child "contingently on his attaining some specified age" within S. 25 of the Income-tax Act, 1918, so as to entitle him to repayment of a sum in relief of tax under that section.

H. J. GREEN *v.* J. GLIKSTEN & SON, LTD., (1928) 1 K.B 475.

Income-tax—Insurance against fire—Loss of stock in trade by fire—Receipt of insurance money to be included in the trading account—Income-tax Act, 1918 (8 *&* 9 *Geo.* 5, *c.* 40), *Sch. D, Case* 1.

Where a company carrying on timber business lost a large part of their stock by fire but the loss was covered by insurance,

Held, that the money actually received by the company from the insurance company in respect of the timber destroyed must be brought into the trading account for the purpose of income-tax but not the figure representing the estimated cost price of the timber.

REES ROTURBO DEVELOPMENT SYNDICATE, LTD. *v.* INLAND REVENUE COMMISSIONERS, (1928) 1 K. B. 506.

Income-tax—Excess Profits Duty—Sale of patent rights—Capital asset or profit of circulating capital—Liability to assessment—Commissioner's finding insufficient—Income-tax Act, 1918 (8 *&* 9 *Geo.* 5, *c.* 40), *Sch. D.*

The assessee (company) was assessed to income-tax and excess profits duty upon a certain sum which represented the share of the company in respect of the sale price of the patent rights in the United States of America of the group of patents relating to centrifugal, turbine and similar pumps, which it was the purpose of the company to acquire and turn to account by licenses or by sale. It was contended by the assessee that this sum was a capital asset and not a profit of the circulating capital. The Special Commissioners found that the profits on sale of patents arose in the course of the Company's business and were chargeable to income-tax and excess profits duty.

Held by Lord Hanworth, M. R., and Sargant, L. J., (Scrutton, L. J., dissenting): The finding of the Commissioners was not that the profit was realised as part of its ordinary trading and was not in itself a sufficient finding of fact and the sale of the patent rights was not a profit of circulating capital but a transmutation of capital asset into money.

LORD TREDEGAR *v.* HARWOOD, (1928) 1 Ch. 59.

Landlord and Tenant—Lease—Covenants—Lessee to insure in the Law Fire Office or "in some other responsible Insurance Office to be approved by the lessor"—Right of lessee to select alternative responsible office—Desire of lessor that all houses on estate should be insured in one office—Whether a ground for refusal of approval.

A lessee covenanted to keep demised premises insured in his own name and that of the lessor in the 'L' office,..... "or in some other responsible insurance office to be approved by the lessor....." The defendant the assignee of the lease did not continue the policy in 'L' office but took out a policy in a different company. The plaintiff (lessor) refused to approve of the latter company on the ground that for the purposes of estate management he required that all houses upon his estate should be insured in the same office.

Held, the lessor could not insist upon the premises being insured in the 'L' or any other particular office. The covenant conferred an alternative on the lessee to select any other office he might choose provided it was a responsible one. The lessor, who had the right of approval, must exercise that right reasonably and not capriciously; not with a view to his personal ends but solely with the object of finding whether the company selected by the lessee was "responsible" and a suitable company for the undertaking of the risk.

HARRINGTON MOTOR CO., *In re* : CHAPLIN, *Ex parte*, (1928) 1 Ch. 105.

Company—Winding up—Injury caused by negligence of company's servant—Judgment for damages and costs in action against company—Subsequent liquidation before levy of execution—Payment by insurance company to liquidator of damages and costs—Right of judgment-creditor to the amount.

A limited company which was insured against third party risks was sued by the applicant for damages and costs for personal injuries caused to him by the negligence of one of its servants. The applicant recovered judgment and, before he levied execution, the company went into liquidation and the insurance company paid the amount of damages and costs to the liquidator. The applicant claimed that the moneys so paid should be handed over to him and must not be available for distribution among its general creditors in the winding up.

Held, that the applicant had no right either at law or in equity to require that the money should be handed over to him; but that the money formed part of the assets of the company and was as such available for distribution among its general creditors including the applicant.

COLLAROY CO. *v.* GIFFARD, (1928) 1 Ch. 144.

Company—Preference shares and ordinary shares—Priority of preference shares as to dividend and capital—Winding up of company—Surplus assets—Right of preference share-holders to participate.

The memorandum of articles of association of a company provided that the capital was divided into preference shares and certain ordinary shares and that the preference shares should confer the right to a fixed cumulative preferential dividend at a certain rate on the capital paid up thereon and shall rank both as regards dividends and capital in priority to ordinary shares.

Held, that the memorandum having provided for the right of the preference share-holders, the preference share-holders would be entitled only to a return of their capital in the event of their winding up and would not be entitled to participate in the surplus assets.

CREDITON GAS CO. *v.* CREDITON URBAN COUNCIL, (1928) 1 Ch. 174.

Contract—Non-mention of duration—Determination by notice.

An agreement under seal was entered into between a gas company and a district council by which the company agreed to light all the public lamps within the district from and after the 1st day of September every year up to the following 1st day of May inclusive. The period for which it was to run was not mentioned in the agreement nor was express power to determine given under it.

Held, that, though the agreement was indefinite in point of time, the very nature of the contract implied that either party could determine it by notice.

ROYAL EXCHANGE ASSURANCE *v.* HOPE, (1928) 1 Ch. 179.

Insurance (Life)—Assignment of the policy—Time limit for the risk—Extension of the time by the assured—Endorsement on the policy with the new time limit—No notice of the extension to the assignee—Rights of the assignee to the sum insured—Trust—Variation of the original contract and not a new contract.

By a policy, dated August 13, 1925, one Samuel Barker effected an insurance upon his life for the term of one year from July, 31st, 1925, with an insurance society. The insurance society agreed to pay the assured, or his executors, or his assigns the policy money in the event of the death of the insured on or before July 31st, 1926. Barker assigned the benefit of this policy to the defendant in July, 1926, the assured arranged for an extension of the period of insurance to October 31st, 1926, and to this effect an endorsement, namely, " that the sum assured shall be payable in the event of the death of the life assured on or before 31st October, 1926", was made on the policy. The benefit of extension of time was not assigned to the defendant. When the insured died on October 1, 1926, his executors brought an action for a declaration that they and not the assignee defendant were entitled to receive the sum assured.

Held, that the extension of the policy by the insured did not constitute a new contract but was merely a variation of the original contract and therefore the defendant was entitled to the policy money.

Even if it was regarded as a new contract it must be treated that the deceased by a new contract effected an enlargement of the time-limit acting as trustee for the defendant and therefore the defendant could enforce her rights as a beneficiary.

In re A Debtor, (1928) 1 Ch. 199.

Bankruptcy—Receiving order—Petitioning creditor utilising bankruptcy proceedings for extortion of money from the debtor—Receiving order discharged—Bankruptcy Act, 1914(4 *and* 5 *Geo.* 5, *c.* 59), *S.* 5, *Sub-section* 3.

Where a creditor utilized bankruptcy proceedings for the purpose of extorting or attempting to extort money from the debtor for which the debtor was in no sense liable,

Held, that the proceedings constituted an abuse of the process of the court and therefore no receiving order ought to be made.

BROOKS, *In re* : PUBLIC TRUSTEE *v.* WHITE, (1928) 1 Ch. 214.

Will—Construction—Residuary Gift—Life interest to the widow of the testator—Remainder to children or their "personal representatives"—Meaning of.

A will provided that the trustees should pay the income to the testator's widow during her life, and from and after her death the income should be distributed equally between the seven children of the testator during their respective lives, and from and after the death of any child whether in his life-time or after his decease, the trustees should hold 1|7th of the capital of the estate to the income of which such child should have been entitled or in the case of a child predeceasing the testator such share as would have accrued to such child under the will if he or she had survived the testator, upon trust for " personal representatives" of the child.

Held, that the words " personal representatives" should be construed as meaning "executors or administrators" and not as next of kin and, therefore, on the death of widow the seven children became absolutely entitled to their respective shares in the testator's residuary estate.

MESSAGER *v.* BRITISH BROADCASTING CO., 97 L. J. K. B. 65.

Copyright—Broadcasting an opera—Whether an infringement—Copyright Act, 1911 (1 & 2 *Geo.* 5, *c.* 46)—*Contract—Assignability.*

The plaintiff, a composer of an opera, granted an exclusive license for the performance thereof, under an agreement, to a well-known theatrical producer, George Edwards. After George Edward's death, his successors-in-title agreed to permit a wire-

less performance by the defendants for £60. The plaintiff was not informed of this; and the defendants gave a broadcast performance of substantially the whole opera. In an action by the plaintiff for damages for the infringement of the copyright,

Held, that there was an infringement of the musical copyright by the defendants as broadcasting an opera by wireless telephony amounted to 'perform' it in 'public' within the meaning of the S. 1, Sub-section 2 of the Copyright Act, 1911, and

(2) that the license granted by the plaintiff to George Edwards was personal and not assignable.

COTTAGE CLUB ESTATES *v.* WOODSIDE ESTATE CO., 97 L J K. B. 72.

Arbitration—Contract with an arbitration clause—One of the contracting parties assigning his rights under the contract to another—Disputes—Jurisdiction of the arbitrator.

A building contractor entered into a contract with a building owner for the construction of houses. The contract contained an arbitration clause. Before the completion of the contract, the contractor assigned in writing his rights to all moneys due and to become due under the contract to a third person, and notice of assignment was served on the building-owner. After the completion of the work, disputes arose as to the amount due to the contractor from the owner and the matter was referred to arbitration, and an award was passed by the arbitrator that the contractor was entitled to recover certain sum of money from the building owner.

Held, that the deed of assignment and notice precluded the contractor from maintaining his claim against the building-owner.

An arbitrator has jurisdiction to deal with a dispute between the parties to a contract in the terms of an arbitration clause in the contract, notwithstanding that one of the parties has by assignment divested himself of his rights to claim under the contract, but in dealing with the dispute the arbitrator must not merely consider the terms of the contract within the limits of the document, but must consider the application and enforcement of those terms having regard to the legal position which has been created by the assignment.

INLAND REVENUE COMMISSIONERS *v.* YORKSHIRE AGRICULTURAL SOCIETY, 97 L. J. K. B. 100.

Income-tax—Agricultural Society—" Body of persons established for charitable purposes only"—Income of invested funds —Exemption as charity—Income-tax Act, 1918, *S.* 37, *Sub-section* 1 (*b*).

A County Agricultural Society was formed in 1837 for the purpose of holding an annual agricultural show of livestock, implements, etc., to provide for agricultural education, and to promote the interests of agriculture generally. The Society always held an annual show in some town in the county and prizes were awarded on general competition. It had over 3000 members, the annual subscription of each member being £1. The members enjoyed certain privileges during the annual shows. The Society claimed exemption from income-tax on the interest and dividends of its invested funds on the ground that the society was a "body of persons established for charitable purposes only" within the meaning of S. 37 (1) (*b*) of the Income-tax Act, 1918. The Special Commissioners granted the exemption, but, Rowlatt, J., reversed the decision.

Held (on appeal), that the Society was entitled to exemption from tax because the objects of the Society were wholly beneficial to the community at large. The fact that the members of the Society enjoyed certain privileges did not make it a members' society and prevent the general objects from being charitable.

JOTTINGS AND CUTTINGS.

Marriage between Relatives.—Sir Arthur Shirley Benn has introduced into Parliament a Bill to amend the law relating to the marriage of persons with their nephew or niece by marriage. The state of the law on this subject is admittedly quite illogical, and shows the mischief of piecemeal legislation, particularly in matters which affect the status of individuals. As a result of years of effort, the Deceased Wife's Sister's Marriage Act of 1907 legalised marriages between a man and his deceased wife's sister; but it went no further, and Astbury, J., held in *Re Phillips* (1919, 1 Ch. 128), that the Act did not enable a man to marry the daughter of his deceased wife's sister, although, so far as degrees of consanguinity are concerned, she is, of course, a step further removed. And the Act of 1907 was not even reciprocal as between the sexes, for it did not enable a woman to marry her deceased husband's brother; this right was given by the Deceased

Brothers' Widow's Marriage Act of 1921. Sir Arthur Shirley Benn's Bill proposes to legalise marriage between a man and

"(1) his deceased wife's brother's daughter;
"(2) his deceased wife's sister's daughter;
"(3) his father's deceased brother's widow;
"(4) his mother's deceased brother's widow;
"(5) his deceased wife's father's sister;
"(6) his deceased wife's mother's sister;
"(7) his brother's deceased son's widow;
"(8) his sister's deceased son's widow".—*L. J.*, 1928, p. 179.

Doctors and Lawyers :—It is a strange phenomenon, when doctors and lawyers meet, dine and converse, that the conversation and speeches are always tinged with lunacy; there is much talk about the irresistible impulse and cognate matters; and one of the legal speakers will meet and defy the arguments of the alienists. Apart from such matters, the evening will invariably end on a note of mutual admiration and respect; and the guests go home contented ; each feeling that he belongs to the noblest, most useful and most altruistic profession in the whole wide world of human activity.

Sir Ernest Wild's jest touching the extinction of barberism in both professions has left me guessing: Does it mean that doctors as lawyers have taken the Nazarite vow? The barber and the surgeon were, of course, at one time of the same profession, but that does not throw more light on the matter. Or is it that uncertainty has so far been removed from the two sciences that the patient and the litigant are less liable than formerly to the "close shave"? I wish I knew.—*L. J.*, 1928, p. 194.

Lord Phillimore :—Mr. Punch's Personality of the week is our own Lord Phillimore, and Mr. Bernard Partridge has happily portrayed him seated at his desk perusing an open volume, *Horatii Carmina,* with a game of "patience" lying near. "To Orthodoxy wed, Learned in Classic lore, He lives with Patience close in touch, And Justice in his head; We could not love all these so much Loved we not Phillimore". *Punch* has done the great man justice, with pen and pencil.

A learned man and a godly, he has ever been. We have all heard of his reproof of the nervous witness who unconsciously

maltreated the sacred Testament during an anxious sojourn in the witness box. He it was who refused to help Barnes, J. (afterwards Lord Gorell) in the Divorce Court, because he had a deep-rooted conscientious objection to divorce. "At this rate," observed Barnes, J., on hearing of his refusal, "we shall soon have a Unitarian judge refusing to sit with the Trinity Masters". —*L. J.*, 1928, p. 194.

Hilary :—"Why," writes a person of enquiring mind, who signs himself, appropriately enough, "Law Student", "are the present sittings called the Hilary Sittings?" Personally, I neither knew nor greatly cared until the question was asked; but I have searched out the matter, and the answer is as follows: In remote and pious days the sittings of the Courts after Christmas were made to date approximately from the Feast of St. Hilary of Poietiers, which fell on January 13. The matter is now regulated, and the name "Hilary" applies authoritatively to the term by O. 63, R. 1, which declares that the Hilary sittings shall commence on January 11 and terminate on the Wednesday before Easter. May I add, to bring the matter up to date and beyond, that the term will end this year on April 4. The most puzzling thing about these terms and vacations is that there are many days which are neither "sittings" nor "vacation". For example, "the Easter sittings shall commence on the Tuesday after Easter Week," says R. 1. "The Easter Vacation," says R. 4 (1) (of the Order aforesaid), "shall commence on Good Friday and terminate on Easter Tuesday." Let this curious matter be reserved for further investigation.—*L. J.*, 1928, p. 219.

Celibacy and Longevity :—I have been assured, by a man who claims to have seen the authentic figures, that married men live longer than bachelors; if this be so, the age-old antagonism which exists between the married and the celibate is further explained. Not only does the bachelor enjoy his notorious privileges and immunities, but he contrives a more timely exit than his married brother from this vale of tears and taxation.

There is, of course, Sir Harry Poland, who sustained the burdens of celibacy for nearly a century and who in odd moments of piety went on to the last thanking Heaven that he was a confirmed bachelor. "If I had married," said he, at the dangerous age of ninety-four, "I might have been bothered by children, or, perhaps, even disgraced by them. As far as I can see, married life is so much worry. If I had married I should

have been dead long since." Well, if Peter Poland, his father, had been of the same mind, Sir Harry would never have established the Bar record for longevity ; many murderers would not have died, and some of them, married and single, would have lived to a ripe and respected old age. There is no denying, while paying all due regard to the maxim, *De mortuis nil nisi bonum,* that in some respects Sir Harry was a man of narrow and unsocial views. And in disclosing one of the secrets of old age, it is curious that he should attribute to celibacy what other ancients have accounted for variously by the practice and pursuit of dieting, over-eating, temperance, intemperance, virtue, and the moderate indulgence in various vices. Sir Edward Clarke, characteristically enough, takes the happier and the better view ; and he has shown that for his length of days his wife is greatly to thank. —*L. J.*, 1928, p. 219.

Speeches : The Influence of Laudanum :—A recent reference to the fine speeches (formerly) made by counsel and others while "under the influence of drink" has caused one to remind me that many of Erskine's best deliverances were made under the influence of laudanum. It was said of him that his vivid imagination supplied him with forcible images—which, clothed in language of transparent beauty, never failed to carry the jury along with him. And their oratorical achievement was due in part to his high animal spirits ; and in part to the exciting effect of the drug upon his imagination.

He had another foible, not dissimilar to that of a languid silk of recent times. He was in the habit of pretending that he did some of his best things without forethought or preparation, out of the treasury of his mind, and on the impulse of the moment. In fact, Thomas Erskine, like others of his kind, was a secret worker.—*L. J.*, 1928, p. 219.

And Old-Fashioned Fees :—From age to age the fees of barristers have varied; the salaries of the Judges alone, between opposite ends of the same century, remain in a state of equilibrium. At the trial of the Seven Bishops, in the reign of the Second James, the largest fee paid to counsel for defending a Bishop was 20*l.*; and the total fees paid to all defending counsel was 240*l.* 16*s.* In Commonwealth days lawyers were supposed to do well. "Nor are their fees of mean value," says an old writer; "three pounds, five pounds, six pounds being usual even for the making of a motion of five or six lines. Many of them

rise from nothing to great estates; five thousand pounds, six thousand pounds, nay, ten thousand pounds by the year, and purchase baronies and earldoms." In the spacious days of James II the law officers enjoyed the emoluments of private practice; and it was perhaps as well. For the official salary of Sir Francis Bacon, A. G., was 81*l.* 6*s.* 8*d.*; Sir Henry Yelverton, S. G., 70*l.*; the King's Sergeant, 41*l.* 6*s*, 10*d.*; and Henry Martin, advocate for ecclesiastical causes, 20*l.*

The pounds seem scandalous; to say nothing of the shillings and the pence.—*L. J.*, 1928, p. 244.

Hungaro-Rumanian Dispute :—By a strange reversal of opinion since last autumn, when the British Foreign Secretary chided Hungary for standing on its Treaty rights as to the lands of Hungarians expropriated by Rumania in Transylvania, it is now Rumania's turn to feel the displeasure of the League Council. The legal aspect of this long drawn-out dispute was dealt with *in extenso* in an article in the *Law Journal* of October 22, 1927, and it is only necessary to recapitulate the simple facts; that there was a special article in the Treaty of the Trianon purporting to preserve the rights of Hungarians in their estates in the Province of Transylvania which was handed over to Rumania by that treaty; that Rumania subsequently passed an agrarian law for the compulsory acquisition of all land deemed fit to be broken up into smaller holdings; and that one result of this law was that the Hungarian owners found themselves dispossessed on payment of compensation which they said represented in the majority of cases only a fraction of the value. Most of the dispossessed owners resorted to the Mixed Hungaro-Rumanian Tribunal set up under the Treaty for redress, but Rumania, declaring that that tribunal was not competent to try an issue that affected the domestic economy of the whole country, prevented any final decision by withdrawing its representative. Hungary appealed to the League Council to appoint a Judge in accordance with the Treaty in order to enable the tribunal to adjudicate in the matter, and alternatively offered to accept the arbitrament of the permanent Court of Justice at The Hague. Rumania refused both alternatives, and the League sub-committee entrusted with the matter made an oracular recommendation, which, if it meant anything, would have involved Hungary giving up its legal claim. Both countries were exhorted for the third or fourth time to settle the matter.—*L. J.*, 1928, p. 245.

The League Decision :—Meanwhile, weighty legal opinion was making itself felt in favour of the tribunal being placed in a position to adjudicate in a matter in which it was obviously competent to do so. The voices of several leading British lawyers were raised in the House of Lords, including those of Lord Buckmaster, Lord Phillimore, and Lord Carson, against Rumania's obstruction, and the influence of Lord Rothermere's newspapers in favour of giving the Hungarian claims a fair hearing made itself felt on the Continent. The Rumanian Government has published the opinions of fifteen distinguished jurists of several countries in favour of its plea that any decision in favour of the Hungarians would infringe its sovereignty, but all of them, including that of Professor Pearce Higgins, K. C., seem to be more governed by a consideration of political expediency than of treaty rights and contractual obligations. In the result the League Council decided, in view of the failure of the disputants to come to a settlement, to recommend them to agree to the appointment of two additional Judges from neutral countries to sit on the tribunal under Article 239 of the Treaty, and that the Rumanian member should resume his seat. Hungary agreed, and it now remains to be seen if Rumania will follow suit. Czecho-Slovakia will shortly be faced with a similar problem in respect of expropriated Hungarian landowners, so the League Council may be forgiven for its somewhat inconsistent efforts to preserve the peace by a settlement out of Court.—*L. J.*, 1928, p. 246.

Copyright in a "Slogan" :—The first reported decision of Mr. Justice Humphreys in a civil case is, unfortunately, one of rather doubtful authority on the much-contested field of "originality" in matters of copyright. The plaintiff in the action, an electro-therapist, claimed literary copyright for the slogan adopted by him in advertisements of his treatment, that beauty or youthfulness was "a social necessity, not a luxury," and the defendant, a beauty specialist, was said to have infringed this copyright by using the words "social necessity" in one of his advertisements [*Sinanide* v. *Brown* (*Maison Kosmeo*), *The Times*, March 8]. The learned Judge, basing himself on the undisputed law that there may be copyright in literary matter or a book even if it is used as an advertisement, held that there was also "originality" in the plaintiff's slogan "because it was so obviously untrue," and so, in his judgment, the phrase came within the language of the Copyright Act, 1911, as being the

subject of copyright—and he granted an injunction, with nominal damages and costs. The case is rather like the well known one of *Dicks* v. *Yates* (18 Ch. D. 77) where the Court of Appeal (reversing Bacon, V. C.) refused an injunction against the use of the arresting words "Splendid Misery" in the title of a novel, Jessel, M. R., and Lush, L. J., on the ground of lack of originality or likelihood of mistake on the part of the public, and James, L. J., on the ground that there had been no infringement. This is the decision which has hitherto held the field in matters of this kind, and one may respectfully express the hope that it will not be shaken by this recent "slogan" judgment.—*L. J.*, 1928, p. 247.

"Hotel" Divorces :—During the last two years those whose business keeps them in the Divorce Court have not been able to escape the impression that wives' divorce suits, the charges in which are based merely on some incident of recent occurrence at a hotel, have been markedly on the increase. It has been a usual thing to hear when the undefended list is being taken that a husband has become associated with some other woman, whose identity could be ascertained without much difficulty, but that the offence is charged with some "woman unknown" on a solitary occasion, evidence of which comes to the wife in the form of a letter from the husband, enclosing a hotel-bill. It is this class of case against which twice within a week the President, Lord Merrivale, inveighed. In his first warning on March 12, he said that any case brought before the court on such a flimsy material known as "hotel evidence" threw discredit on the administration of justice. On that occasion he adjourned two cases for further inquiry. But on Monday, in *Aylward* v. *Aylward* (*Times*, 20th inst.) he went further and dismissed a petition, intimating that he would no longer sanction this sort of proceeding, and hinting that only an Act of Parliament could compel him to do so.—*L. J.*, 1928, p. 248.

A Point of Etiquette :—It is understood that the Bar Council will be asked to give a ruling on a point of professional etiquette; namely, whether Counsel may, with propriety, remind the jury in a murder case of the punishment which will normally follow a verdict of guilty. It will be remembered that the Lord Chief not long ago administered a rebuke to Mr. Valetta for doing this, "not once, but five times," and observed that the jury's sole concern was with their verdict and not at all with the consequences of that verdict. Death might or might not ensue.

In the temple there is still much discussion on the matter; and I have been moved to look at the precedents. One thing is certain; if Mr. Valetta offended, he did so in a very large and very distinguished company. Even Sir Edward Clarke, a model of propriety, when defending in murder cases, did not fail, as in the Penge case (four times) and the Bartlett case (once), to remind the jury that the issue was one of life and death. The reports of murder trials are indeed thickly strewn with instances, many of them modern. The question would appear to be how much counsel may, in the future, tell the jury of the punishment of crime; and the mode in which he should tell it. The telling itself is from of old, and in the tradition.—*L. J.*, 1928, p. 264.

THE INDIAN BAR COUNCILS ACT.

Notification by the Government of India.—In pursuance of sub-section (3) of S. 1 of the Indian Bar Councils Act, 1926 (XXXVIII of 1926), the Governor-General in Council is pleased to appoint the 16th day of July, 1928, as the date on which the provisions of the said Act not yet in operation shall come into force in respect of the High Court of Judicature at Madras.—*No. F* 994|27, *Judicial, Home Department, dated 27th March,* 1928.

Notification by the High Court.—Notice is hereby given with reference to S. 8 sub-section (2) of the Indian Bar Councils Act 1926, that all persons, who are advocates or vakils entitled as of right to practise in the High Court, Madras, and who wish to have their names entered in the roll of Advocates to be maintained under the Act, shall pay on or before the 2nd July, 1928, the fee of ten rupees payable to the Bar Council to the Registrar of the High Court, who shall be the Secretary to the Council for the time being.

2. The fee can be paid to the Accountant of the High Court on days on which the High Court will be open for the transaction of urgent business during the vacation, *i.e.*, on Mondays and Tuesdays every week.—*R. O. C. No.* 1401 *B*-1|28, *dated 3rd May,* 1928.

BOOK REVIEWS.

ADVOCACY SERIES, VOL. II—CROSS-EXAMINATION ADAPTED TO PARTICULAR CLASSES OF WITNESSES, by P. Ramanatha Aiyar, B.A., B.L., Vakil, Trichinopoly and N. S. Ranganatha Aiyar, B.A., B.L. Price Rs. 4.

An interesting variety of witnesses and their evidence is so amply illustrated in this volume that we wonder how a subject like this has been rendered quite as fresh and attractive as any book of short stories. But, that we feel rather entertained than profitably engaged in going through these pages, may be the impression left on the mind which probes into the final value of such a publication. We are, of course, not far from realising that, in the attempt to give us the many kinds of witnesses and their answers, the book does not equally abound in instructions regarding the methods of handling them. Nevertheless the reader may not be entirely warranted in the conclusion that the subject of witnesses and their examination has not been dealt with fully. For, do we not persuade ourselves to expect that, in the exhaustive treatment of "The Art of Cross-examination", which the authors have planned out, they may yet provide us with the most necessary and useful information? The subject is an essential one and ours is the gain when we are given an insight into the workings of the human brain, especially in the witness box. The best intellect quails there sometimes, while the least truthful witness scores a victory. The manifold types of witnesses, of which this volume is full, convey to us that, however much the individual mind may be confident of its strength, it more often gives way before the clever art of the cross-examiner, though quite amusingly enough, even the adept advocate gets frustrated, at times, by an intrepid answer from the box. We are glad to receive this volume in quick succession to the first of the series.—*K. Ç.*

"TRIAL OF THE DUCHESS OF KINGSTON." Edited by Lewis Melville. Published by Messrs. Butterworth & Co., Ltd., Calcutta. Price Rs. 6-8-0.

The volume under review deals not with a case of gruesome murder by poisoning or otherwise as in most of the prior volumes of the Notable Trials Series but with a case of bigamy. The accused, a Peeress of the British Realm, claimed to be tried by her peers, and we have now before us the full records of a famous trial which took place more than 150 years ago in the historic Westminster Hall, before as many as 118 Peers. The reader gets an insight into the so-called high society life in England in those days, but to the lawyer the interest will mainly be in the able and lucid arguments on an important question of law—how far the decision of an English Ecclesiastical Court on the question of the subsistence or otherwise of a

marriage between two persons will conclude the trial of an indictment for bigamy. The arguments of four Counsel on the side of the defence and of an equal number on the side of the prosecution are given *in extenso,* and in fact they cover half the volume. As our readers are aware the Duchess of Kingston's case is always quoted in text-books as a leading case on *Res judicata.* Apart from this, the trial was a solemn farce as predicted by Lord Mansfield even at the very commencement, for, the Duchess, though unanimously found guilty, claimed successfully "the benefit of the Peerage" according to the Statutes, and was immediately discharged!

It is needless to say that the volume maintains all the well-known features of the Notable Trials Series, and is a welcome addition which we heartily recommend to our readers.

IS HARTAL ILLEGAL? by Mr. N. C. Sen Gupta, M.A., D.L., Advocate, Calcutta High Court. Published by M. C. Sarkar and Sons, Calcutta.

This is a pamphlet of absorbing interest at the present day when *hartals* are becoming more frequent. It is not altogether easy to suppress one's political inclinations even in a purely legal discussion on a question like this. Mr. N. N. Sircar has come to the conclusion in his monograph that *hartal* is illegal and the promoters of the same are liable, to which this pamphlet is pubilshed as a rejoinder. Mr. Sen Gupta has in his discussion of the subject completely succeeded in avoiding political considerations. Whatever may be the ultimate conclusion to which one may come on the question, the arguments advanced are entitled to respectful consideration even by those who do not agree with the conclusion arrived at. On the question of the principle on which the interference with third persons' contracts is concerned, we would refer to the statement of Viscount Haldane in delivering the judgment of the Judicial Committee of the Privy Council in *Jasperson* v. *Dominion Tobacco Co.* (1), where His Lordship lays down: "The reason on which this conclusion rests is one which is now established. Interference directed to bring about a violation of legal right, such as that of respondent company to have their contract with Deacon duly observed, is a cause of action, and it is a violation of legal right to interfere with contractual relations recognised by law if there be no sufficient justification for the interference."

1. L R (1923) A C 709 at p. 712 (P C).

and *Lumley* v. *Gye* (2) and *Quinn* v. *Leathem* (3) are relied on by His Lordship. After these decisions have gone into fabric of English law, it may not be profitable to examine whether *Lumley* v. *Gye* (2) was decided correctly. It will probably be found that when many of our modern legal conceptions are traced to their source, the grounds on which they rest may not be found very clear or definite.

THE ENGLISH CONSTITUTIONAL LAW, by Jyoti Prasad Sarvadhikari, M.A., B.L., 2nd Edition, 1928. Published by Eastern Law House, Calcutta, Price Rs. 5-8-0.

The appearance in this hand-book of English Constitutional Law is opportune at this moment when the revision of the Indian constitution is being contemplated. As representative institutions modelled on the English system are sought to be established here with the necessary modifications, a clear exposition of the fundamental principles of the English constitutional law examining the ideas underlying the structure of the state with its different organs, the legislature, the executive, the judiciary and the crown with its prerogatives, is of value. The comparisons that have occasionally been made in the work with the American, French and other systems will also be found useful. The new chapter that has been added in this edition, *i.e.*, with regard to the Indian constitution, enhances its value and will be helpful in having a historical survey of India's constitution since its British connection. We are sure that the book will be appreciated not merely by the students but by lawyers as well.

PARTITION IN BRITISH INDIA, by Debendranath Datta, B.L. Published by Messrs. Butterworth & Co., Calcutta.

As the system of joint family is very common among the Hindus, the law relating to partition is bound to occupy a prominent place in the law of the country. The rules of substantive law on the subject are not many and the author has devoted himself largely in the work to the practice and procedure in partition suits until the final allotment by metes and bounds. Numerous difficulties arise at several stages in working out the rights of the sharers and the learned author has dealt with them all noticing the decisions in their appropriate places. The book is the first of its kind and will be found useful to practitioners, judges and commissioners engaged in partitioning estates.

2. (1853) 2 E & B 216 : 118 E R 749.
3. L R (1901) A C 495.

THE LAW OF ARBITRATION IN INDIA, by Mr. K. J. Rustomji. Published by Messrs. Butterworth & Co., Calcutta.

This is an exhaustive and critical commentary on the Indian Arbitration Act by Mr. K. J. Rustomji, who is already well-known to us as the author of several treatises. The author or his work does not therefore need any special commendation from us. It is sufficient to say that he has made available through his work to the lawyers all the learning on the subject contained in the English treatises and reports, which are not easily accessible in the mofussil. The volume under review fully justifies the expectations raised by the name of its author and will find its place in the library of lawyers and judges.

THE LAW OF PRE-EMPTION, by Dattatraya Waman Kathalay, B.A., L.L.M., Advocate, Central Provinces. Published by Pushpak House, Nagpur. Price Rs. 21.

This is the most exhaustive treatise on the Law of Preemption in British India being mainly a statement of the Muhammedan Law of Pre-emption in the form of a Code with comments thereon and commentaries on the Pre-emption Acts of the various Provinces in British India. The examination of the law of Pre-emption from the juristic point of view in the opening chapter and the references to the analogous laws in the jurisprudence of other countries are bound to be of great interest. The author is entitled to the gratitude of lawyers for his research in comparative jurisprudence on this subject. The statement of the Muhammedan Law of Pre-emption in the form of a Code will tend to a clear understanding of the principles on the subject and the commentaries will tend to amplify them in the light of the decisions. The various provincial enactments with the exhaustive commentaries thereon will be highly valued in the several Provinces. Their collection in one volume will also help a comparative study of the various enactments and their provisions. We are sure that this work will shortly take its place among the foremost legal treatises in this country.

[END OF VOLUME LIV.]